IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.223 of 1996

Reserved on:20.11.2007.

Decided on:December 28, 2007.

State of H.P. ***.....Appellant.***

VERSUS

Vinod Kumari Chandel ***.....Respondent.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellant: **Mr.M.L.Chauhan, Addl.A.G.**

For the Respondent: **Mr.Rakesh Jaswal, Advocate.**

Kuldip Singh, Judge:

The State is in appeal against the judgment, decree dated 11.12.1995 passed by learned District Judge, Solan in Civil Appeal No.15-NL/13 of 1994, setting aside judgment, decreed dated 18.12.1993 passed by learned Sub Judge 1st Class, Nalagarh in Civil Suit No.306/1 of 1998.

2. The facts, in brief, are that respondent filed a suit for declaration that she is owner in possession of suit land / property measuring 23.50 sq. meters comprised in Khasra No.683 as per *Misal Haquiat Bandobast Jadid UP-Mohal Purana Nalagarh, Tehsil Nalagarh.* The appellant has no right, title or interest in the suit

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

property. The revenue entries of settlement of Nalagarh Town of suit property are wrong, illegal and inoperative on the rights of the respondent. She has also prayed permanent prohibitory injunction restraining the respondent from dispossessing and interfering in any manner in pursuance of void proceedings of ejectment titled as *State Versus Vinod Kumari Chandel* pending before Assistant Collector 2nd Grade (Naib Tehsildar), Nalagarh. She has also prayed that respondent be restrained from realizing any penalty as a consequence of ejectment proceedings.

3. The respondent has pleaded that earlier Mula Mal since the inception of Nalagarh Town was owner in possession of property comprised in Khasra No.1195/1 corresponding to present Khasra No.684 adjacent to suit property measuring 23.50 sq. meters comprised in Khasra No.683 as per *Misal Haquiat Bandobast Jadid UP-Mohal Purana Nalagarh, Tehsil Nalagarh.* Mula Mal was also owner of other properties in Nalagarh Town. Assistant Collector 2nd Grade (Naib Tehsildar), Nalagarh has wrongly issued notice under Section 163 of the H.P. Land Revenue Act to the respondent regarding the suit property. It has been further alleged that respondent is coming in possession of the suit property as owner through her predecessors in title. Mula Mal sold his house property of Khola to Daulat Ram. Previously there was *Chabutra* of 3 feet height on the suit property which was made *pucca* by Daulat Ram. Daulat

Ram remained owner in possession of suit property along with other property comprised in Khasra No.1195/1.

4. On 4.1.1966 Daulat Ram sold house property etc. to Jaswant Singh Joga and on 10.7.1984 Jaswant Singh Joga sold house property to Ram Partap Chandel, husband of respondent, and became owner in possession of the suit property. In family settlement, the respondent became owner of the house property. This was confirmed in decree dated 15.7.1982. Thus, respondent has pleaded that she has become owner of the suit property by way of adverse possession as she is coming in possession of this property for the last more than 100 years and since the date of purchase of adjacent house property by Daulat Ram. The suit property never vested in appellant. The entries to this effect are wrong, illegal. The respondent has spent Rs.30,000 for raising construction of walls around suit property and other construction. In the alternative, the respondent has also submitted that she has acquired indefeasible right to use the suit property by way of grant, implied grant or lost grant, in addition to right of prescription for user as a matter of right for the last more than 100 years. On 26.10.1988 the employees of the appellant threatened to dispossess and interfere in the possession of the suit property in pursuance of illegal and void ejectment proceedings. On these grounds, the respondent filed the suit.

5. The suit was contested by appellant by filing written statement in which preliminary objections of want of legal and valid

notice under Section 80 C.P.C., jurisdiction, maintainability, lack of cause of action, locus standi and necessary parties were taken. On merits, the appellant denied the case of the respondent. It has been submitted that respondent has purchased land comprised in Khasra No.1204 min but has encroached upon land comprised in Khasra No.683 measuring 23.50 sq. meters. She has no right, title or interest on Khasra No.683. The appellant is owner of land comprised in Khasra No.683 and Municipal Committee Nalagarh is in possession of this land. The land comprised in Khasra No.683 is adjacent to the land purchased by the respondent. It has been denied that Mula Mal was owner in possession of land comprised in Khasra No.683. It has been submitted that Assistant Collector 2nd Grade Nalagarh has rightly initiated proceedings under Section 163 of the H.P. Land Revenue Act against the respondent inasmuch as respondent has encroached upon Government land without any right, title or interest. The entries in the revenue record are correct. The respondent filed replication. The trial Court framed the following issues:-

1. *Whether the plaintiff is owner in possession of the suit property, as alleged? OPP*
2. *Whether the ejectment proceeding before A.C. 2nd Grade N.T.Nalagarh is illegal, null and void, as alleged? OPP*
3. *Whether the suit is bad for want of notice under Section 80 C.P.C.? OPD*
4. *Whether this Court has no jurisdiction to try this suit, as alleged? OPD*

5. *Whether the suit is not maintainable, as alleged? OPD*
6. *Whether the plaintiff has no locus standi to file the present suit? OPD*
7. *Whether the suit is without cause of action? OPD*
8. *Whether the suit is bad for want of proper and necessary parties? OPD*
9. *Relief.*

The learned Sub Judge dismissed the suit of the respondent on 18.12.1993. The respondent filed appeal which has been allowed by learned District Judge on 11.12.1995. Hence, the State is in second appeal. The appeal has been admitted on the following substantial questions of law as per order dated 13.10.1997 and on these questions learned counsel for the parties addressed the arguments:-

i) *Whether the civil Court has no jurisdiction as provided under Section 10 of the H.P. Common Land (Vesting and Utilization) Act, 1974 as the land has vested to the State free from all encumbrances?*

ii) *Whether the jurisdiction of the civil Court is barred under Section 171 of the H.P. Land Revenue Act in case the proceeding under Section 163 of the Act are pending?*

6. I have heard the learned counsel for the parties and gone through the record. It has been submitted on behalf of the appellant that appellant is the owner of the land, Municipal Committee Nalagarh is in possession as per revenue record. The respondent has

encroached the land comprised in Khasra No.683 measuring 23.50 sq. meters. The respondent has purchased Khasra No.1204 min and she has encroached Khasra No.683. In order to evict her proceedings under Section 163 of the H.P. Land Revenue Act were rightly initiated but she filed the present suit. The civil Court has no jurisdiction to look into the legality of vestment under the H.P. Village Common Lands (Vesting & Utilization) Act, 1974. It has been submitted that not admitting any title of the respondent on the suit land, but if so advised, she could raise question of title in the ejectment proceedings. The respondent has no right, title or interest on the suit property. The lower appellate Court has erred in decreeing the suit of the respondent. The learned counsel for the respondent has supported the impugned judgment, decree.

SUBSTANTIAL QUESTIONS OF LAW NO.(i) & (ii):

7. The substantial questions of law No.(i) and (ii) are with respect to the jurisdiction of the Civil Court to try the suit, therefore, both of them are being disposed of collectively. The respondent has pleaded that earlier Mula Mal was owner in possession of the suit property and after him Daulat Ram and then Jaswant Singh Joga became the owners of the suit property. Ram Partap Chandel, husband of the respondent, purchased the suit property vide sale deed dated 10.7.1981. The respondent appeared as PW-1 and has stated that Mula Mal was in possession of the suit property. Mula Mal sold his ownership land to Daulat Ram and in this way Daulat Ram came in

possession of the suit property. Daulat Ram sold ownership land to Joga Singh who came in possession of the suit property. Joga Singh sold his ownership land to her husband and later on that land was transferred in her name and now she is in possession thereof. On suit property none else was in possession. The ownership land is adjacent to the suit property. The statement of PW-1 is clear that ownership land / property which came to her from Mula Mal and subsequent owners is different from suit property which is adjacent to the ownership property. In the plaint the respondent has pleaded that Mula Mal was owner of property comprised in Khasra No.1195/1 which is adjacent to the suit property. The present number of Khasra No.1195/1 is Khasra No.684 as per Ext.P-3 *Misal Haquiat Bandobast Jadid Up Mohal Purana Nalagarh, Tehsil Nalagarh* and Khasra No.1195/1 (Khasra No.684) in Ext.P-3 is owned and possessed by the husband of the respondent. However, suit property measuring 23.50 sq. meters comprised in Khasra No.683 is owned by State of Himachal Pradesh and in possession of Municipal Committee as per Ext.P-1 *Misal Haquiat Bandobast Jadid Up Mohal Purana Nalagarh, Tehsil Nalagarh.* The respondent has not produced and proved any document of title in her favour of land comprised in Khasra No.683 measuring 23.50 sq. meters.

8. The respondent in Para-3 (c) of the plaint has pleaded that suit land / property never vested in the appellant at any relevant time. The learned District Judge has observed that in *Misal Haquiat*

Ext.P-1 a copy of which is also Ext.D-5 the change in favour of the State is unauthorized and, therefore, the ejectment proceedings against the respondent are wrong and illegal. The respondent has questioned the vestment of the suit property in the State but she has not elaborated vestment either in her pleadings or when she appeared as her own witness as PW-1. If respondent is questioning the vestment of the suit property in favour of the State under the H.P. Village Common Lands (Vesting & Utilization) Act, 1974 then to look into the validity of such vestment is beyond the jurisdiction of civil Court under Section 10 of the Act as held by this Court in ***Dalip Singh and others*** *Versus* ***State of Himachal Pradesh and dothers, 1992(1) Sim.L.C. 320.*** It is not the case of the respondent that provisions of said Act were not complied with or the Collector or State Government has not acted in conformity with the fundamental principles of judicial procedure at the time of vestment. This apart, the Assistant Collector 2nd Grade has proceeded against the respondent under Section 163 of the H.P. Land Revenue Act and copy of proceedings is Ext.D-1, the notice issued to respondent under Section 163 for eviction from the suit property is Ext.D-2 and the report of encroachment Ext.D-3. The respondent at that stage filed the present suit and one of the prayers made in the plaint is for restraining the respondent from dispossessing, interfering in any way in pursuance and under the garb of illegal and void proceedings of ejectment titled as *State Versus Vinod Kumari Chandel* pending before the Assistant

Collector 2nd Grade (N.T.) Nalagarh. The Section 171 excludes the jurisdiction of Civil Courts, the relevant part of Section 171 of the H.P. Land Revenue Act is as follows:-

> "***171. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue Officers.-*** Except as otherwise provided by this Act-
> (1) A Civil Court shall not have jurisdiction in any matter which the State Government or a Revenue Officer is empowered by this Act to dispose of or take cognizance of the manner in which the State Government or any Revenue Officer exercises any powers vested in it or him by or under this Act.
> (2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely –
>
> (i) xxx xxx
> (ii) xxx xxx
> Xxx xxx
>
> xxv) any question, as to any land or any right to, or title or interest in, the land which is an encroached land or in relation to which any person claims that it has vested or is deemed to have vested in him and that he cannot be ejected therefrom under sub-section (1) of section 163; or
> xxvi) the ejectment of any person under section 163 or the recovery of damages or fine payable under sub-section (1) of that section."

There is no denial of the fact that under Section 163 of the H.P. Land Revenue Act the Revenue Officer has jurisdiction to deal with the encroachment on Government land etc. The Revenue Officer has

also jurisdiction to decide question of title under sub-sections (3) and (4) of Section 163. The jurisdiction of the Civil Court under Section 171 is barred in any matter which the State Government or the Revenue Officer is empowered under the H.P. Land Revenue Act to dispose of or take cognizance. The respondent during the pendency of the proceedings of ejectment against her under Section 163 regarding the suit property has filed the present suit and made specific prayer against the ejectment proceedings, such suit is barred under Section 171 of the H.P. Land Revenue Act. The lower appellate Court has failed to take notice of Section 171 of the H.P. Land Revenue Act. Therefore, impugned judgment and decree are not sustainable and are liable to be set aside. The substantial questions of law No.(i) and (ii) are decided accordingly against the respondent and in favour of the appellant.

9. No other point was urged.

10. The result of the above discussion, the appeal is allowed, impugned judgment and decree are set aside and suit of the respondent / plaintiff is dismissed with liberty to the appellant to proceed against the respondent / plaintiff for ejectment from suit property in accordance with law and in such proceedings respondent / plaintiff shall be entitled to take all pleas which are available to her in law. No costs.

December 28, 2007. ***(Kuldip Singh)***
(soni) ***Judge***